

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

*In the Matter of the Petition for Redetermination Under the Emergency Telephone Users
Surcharge of GTE CALIFORNIA, INC. Petitioner*

Appearances:

<i>For Petitioner:</i>	Mr. Robert Dunn Attorney
<i>For Appeals Section, Legal Division:</i>	Mrs. Susan M. Wengel Assistant Chief Counsel
<i>For Excise Taxes Division:</i>	Ms. Janet Vining Senior Tax Counsel

MEMORANDUM OPINION

This opinion considers the merits of a petition for redetermination in the amount of \$405,855.42 in tax for the period April 1, 1989 through March 31, 1992. The Members of the Board of Equalization heard this matter on April 9, 1997.

Petitioner is a service supplier of telephone communication services. As such, petitioner is required to collect the Emergency Telephone Users Surcharge (surcharge) from its customers. This surcharge, commonly called the "911 tax" is imposed on amounts paid by every person in the State of California for intrastate telephone communication services and is used to fund California's "911" emergency telephone system. All amounts collected by petitioner were credited to an accrual account and were reported to the Board of Equalization (Board).

The Board's Special Taxes Department's (Department) audit of petitioner was performed on a random sample basis as petitioner had in excess of 2.76 million customers and issued more than 97 million invoices during the audit period. A sample of 200 randomly selected telephone bills was initially used, but was subsequently determined to be too small. The original sample was expanded to 754 randomly selected bills. For these bills, all taxable charges were totaled and multiplied by the appropriate tax rate to determine the amount of tax petitioner was required to collect from the service users. This amount was then compared to the billed tax amount on each invoice. Overcollections of tax were used to offset undercollections only if the errors were on the same bill.

Thirty-four undercollection errors were found, ranging from \$0.01 to \$1.32 for a total of \$2.70 or an error rate of 1.199%. The Department contends that Revenue and Taxation Code sections 41023 and 41024 provide that the surcharge required to be collected by the supplier and any amount not returned to the user, which is not a surcharge, but was collected from the user and represented as a surcharge, constitute a debt owed by the supplier to this state.

Petitioner contends that all over collections of ten cents or less should be used to offset all undercollections and that the direction given by the Board Members at a July 25, 1996 meeting should be followed. This allows offsets where there are 911 surcharge billing errors of ten cents or less. Overcollections in excess of ten cents would not be offset and would be a debt owed by the service supplier to the State of California.

We reject petitioner's argument that overcollections of ten cents should be used to offset all undercollections. The basis for petitioner's argument is that errors of ten cents are of de minimis amounts. However, a ten cent billing error relates to telephone service charges of \$14.49 (using a .69% tax rate) which is not a de minimis amount. The de minimis concept would be further violated by allowing overcollections of ten cents or less to offset all undercollections which, include bills with errors ranging to \$191.76 (surcharge of \$1.32) in telephone service charges. However, the Board does recognize the inherent complexity of applying the tax to the variety of taxable charges in this program and the generally small amounts of tax involved per customer bill.

Therefore, unintentional under collection errors in the amount of two cents or less are not considered material and will not be recognized as errors when conducting audits. This procedure recognizes factors such as complexity of charges, rounding errors, rate changes during billing cycles, and minor coding errors for services subscribed.

OPINION

For the purposes of the Emergency Telephone User Surcharge Law, we conclude that the petitioner's undercollections of two cents or less per customer bill in the sample of customer invoices will be not be considered as errors. An undercollection exceeding two cents on an individual customer bill will be projected in the audit sample without adjustment.

Done at Sacramento, California, this 9th of October 1997.

Ernest J. Dronenburg, Jr., Chairman
Dean F. Andal, Member
Rex Halverson, Member*

* For Kathleen Connell, per Government Code section 7.9.